

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Replacement of Part 90 by)
Part 88 to Revise the Private)
Land Mobile Radio Services)
and Modify the Policies)
Governing Them)
)
and)
)
Examination of Exclusivity)
and Frequency Assignment)
Policies of the Private)
Land Mobile Radio Services)

PR Docket No. 92-235

To: The Commission

**REPLY COMMENTS OF AFFILIATED AMERICAN RAILROADS
ON ITA "BLUEPRINT"**

The Affiliated American Railroads,^{1/} by their undersigned counsel, hereby submit their Reply Comments in response to the "Proposed Technical Blueprint for Frequency Use Limitations in the Post-Reforming Environment" (the "Blueprint") filed by the Industrial Telecommunications Association, Inc. ("ITA") and comments filed by other parties in response to the Blueprint.^{2/}

^{1/} Affiliated railroads consist of several Class I railroads operating in the U.S. and Canada, all of whom rely extensively on land mobile communications systems operating in frequencies in the present Railroad Radio Service.

^{2/} By Public Notice on January 28, 1997, the Commission requested comment on ITA's Proposed Blueprint. Public Notice, FCC 97-206, (Released January 28, 1997). Pursuant to the Public Notice, the Commission requested Reply Comments be filed by Wednesday, February 12, 1997.

I. INTRODUCTION

In their comments in response to the Blueprint, some parties argued that there was an inadequate basis to offer special protection to railroad users while not offering such protection to other "special" private land mobile radio ("PLMR") users (such as utilities and pipelines). One commenter questioned the procedural propriety of including special protections for the railroads at this stage in the refarming proceeding, arguing that such protections must be the subject of a further notice of proposed rulemaking with opportunity for interested parties to comment.

As described below, there are unique safety and operational communications requirements which make the railroad's communications systems fundamentally different from all other users. These distinctive characteristics necessitate that railroad frequencies be given special protection from other PLMR users in the post-refarming environment. Furthermore, the railroads' request for special protection was introduced in the record of this proceeding over five years ago, providing more than an adequate opportunity for interested parties to comment thereon. There is no need for a further notice of proposed rulemaking for the Commission to consider this matter.

II. THE UNIQUE NATURE OF RAILROAD OPERATIONS DICTATES THAT RAILROAD RADIO CHANNELS RECEIVE SPECIAL PROTECTION

Some parties commented that the proposal to provide special protection to railroads is inconsistent and unjustified because similar special protections have not been

offered for other land mobile radio users.^{3/} These commenters claim that the nature of radio use in their respective industries warrants similar special protection for their PLMR service systems. While the railroads take no position on the merits of these claims, they wish to make clear that railroad operations are unique in their use of mobile radio technology.

A. The Unique Command and Control Operations of Railroads Dictate That They Have Unfettered Access to Clear Communications Channels

The use of mobile radios by railroads for command and control functions is unique among all other land mobile radio users and makes it absolutely necessary that railroads have instant access to clear mobile radio channels. The massive weight and high operating speeds of modern rail equipment make train operations an extremely powerful and potentially destructive force. This potential danger is increased significantly by the long stopping distances inherent in the operation of heavy rolling stock using steel wheels on steel rails. Moreover, unlike other vehicular operations for which mobile radio frequencies are used,^{4/} trains operate on fixed rights-of-way -- precluding the use of evasive maneuvers in the event of a sudden encounter with a dangerous situation. These characteristics, combined with the fact that trains carry both the most precious cargo --

^{3/} See Comments of UTC, the Telecommunications Association ("UTC") at 7; Comments of the American Petroleum Institute at 7.

^{4/} Mobile radio technology deployed in the utility and pipeline industries is used primarily for dispatching repair, service and maintenance vehicles, essential functions to be sure, but ones that do not carry the inherent danger comparable to that involved with the control of massive locomotives on fixed rights-of-way travelling at very high speeds.

humans -- and the most dangerous cargo -- i.e. chemicals and petroleum -- dictate that the movement of all trains must be very carefully controlled and monitored. Wireless mobile radio communication systems are critical for the control and coordination of these movements to reduce the risk of potentially catastrophic accidents. These operating characteristics are unique to the railroad industry.

B. The Nationwide Operations of Railroads Make Their Communications Needs Unique Among All Other PLMR Users

UTC, the Telecommunications Association ("UTC"), stated that the ITA Blueprint provided an inadequate basis for not extending the same protections suggested for railroads to other services such as utilities and pipelines. UTC noted that:

utilities and pipelines may have greater needs for protection of their communications channels due to their unique operating characteristics. Unlike railroads or airports, virtually every location in the US has electric, water and gas service; thus, the need for communications channels by these entities is extremely widespread.^{5/}

While it may be true that virtually every location in the U.S. has utilities which use mobile radio communications, each of these systems is essentially local in nature. The widespread presence of utility mobile radio systems does not require that they be given special nationwide protection. Similarly, the extensive geographic reach of radio communications systems employed by pipelines does not require nationwide protection -- although pipelines stretch across the nation, the mobile radio equipment in vehicles used to monitor, service and maintain them does not routinely move from coast to coast. These mobile radio operations are essentially local and regional in nature.

^{5/} Comments of UTC on ITA's Proposed Technical Blueprint at 7-8.

By contrast, railroad mobile radio operations are inherently nationwide in scope -- a locomotive originating a trip near San Francisco may travel all the way to the east coast of the U.S., and must be directly in contact with appropriate rail dispatch and control centers, via land mobile radio equipment, for the entire trip. Nationwide interoperability of mobile radio equipment is an essential component of the railroads' mobile communications systems because of the need for uniformity in operations.^{6/} A fundamental characteristic of railroad use of the radio frequency spectrum is sharing of facilities, equipment and frequencies on a nationwide basis. Because of these sharing arrangements, mobile radio equipment must be interoperable from one railroad to another, and common frequencies must be used throughout the entire railroad industry. The Federal Railroad Administration ("FRA") has recognized that the "modern practices in which many locomotives operate over other railroads' lines" dictate nationwide interoperability.^{7/} This unique and critical need for nationwide interoperability cannot be maintained if the Railroad Radio Service channels are consolidated with other PLMR users.

6/ See Comments of the Association of American Railroads ("AAR") to the Refarming Report & Order and FNPRM, filed November 20, 1995 at 20.

7/ Railroad Communications and Train Control, Federal Railroad Administration, Department of Transportation Report to Congress, July 1994 at iii (hereafter "FRA Report").

C. Unlike Other User Groups, the Railroads Cannot Accept the Risk of Interference That is Inherent in Uncontrolled Sharing With Non-Railroad Users

The railroads' consistent position throughout this proceeding has been that, because of unique operational characteristics and safety needs, the railroads cannot risk the occurrence of interference that would result if non-railroad users had unfettered access to the mobile radio frequencies used for controlling train operations.

By contrast, both UTC and the American Petroleum Institute ("API") have conceded that utility, pipeline and petroleum operations are such that their members can tolerate the interference risks inherent in sharing frequencies with other users. Recently, UTC submitted its own three-pool consolidation proposal.^{8/} Under the UTC proposal, utilities, along with certain other industrial users, including railroads, would share a pool of frequencies. In its comments on the Blueprint, API proposed the creation of five pools, with petroleum users, utilities, railroads and other industrial users sharing a pool of frequencies in the "Industrial Safety Service."^{9/} These proposals demonstrate that users in these industries have concluded that sharing with other land mobile users will not compromise the safety of their operations -- a conclusion that the railroad industry simply cannot make. Indeed, the FRA and the National Transportation Safety Board ("NTSB")

^{8/} "Twenty is Divisible by Three: UTC's Three-Pool Consolidation Plan for the Private Land Mobile Bands Below 512 MHz," submitted by UTC January 28, 1997.

^{9/} See comments of API at 5 and Exhibit A.

-- agencies charged with ensuring the safety of railroad operations -- have underscored the risks to railroad safety inherent in uncontrolled sharing of railroad frequencies with non-railroad users.^{10/}

III. IT IS UNNECESSARY FOR THE COMMISSION TO ISSUE A FURTHER NOTICE OF PROPOSED RULEMAKING ON THE MATTER OF PROTECTING THE RAILROAD RADIO SERVICE

In its comments, the Coalition of Industrial and Land Transportation Radio Users (the "Coalition") stated that the proposal by ITA to offer special protections to railroads and certain other users was "without adequate explanation," and that, if the Commission decided to adopt special protections in a consolidation plan, "such proposals must be made in a further notice of proposed rule making with adequate opportunity for interested persons to respond."^{11/} Such a proceeding is entirely unnecessary. The record in this proceeding clearly demonstrates that interested parties have had over five years to comment on the proposal to afford special protection to railroad users operating on the

^{10/} See Letter From Jolene M. Molitoris, Administrator, Federal Railroad Administration, to Reed Hundt, Chairman, Federal Communications Commission (Dec. 12, 1995) ("FRA Letter"); Letter From Jim Hall, Chairman, National Transportation Safety Board, to Reed Hundt, Chairman, Federal Communications Commission (Dec. 15, 1995) ("NTSB Letter"). Copies of the FRA Letter and the NTSB Letter were attached as an exhibits to the railroad industry's Comments on the ITA Blueprint filed on February 7, 1997.

^{11/} Comments of Coalition of Industrial and Land Transportation Radio Users at 4-5.

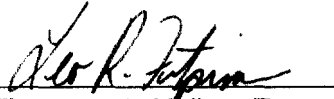
Railroad Radio Service frequencies.^{12/} Consideration of this matter by the Commission is entirely proper at this time, as there has been adequate opportunity for parties to comment on the railroads' position.

IV. CONCLUSION

For the foregoing reasons, the railroads urge the Commission to recognize the the unique safety and operational needs of the railroad industry, and to take such actions in this proceeding that will ensure that these needs may continue to be met.

Respectfully submitted,

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^{12/} See Comments of AAR to the Notice of Inquiry, PR Docket No. 91-170 (filed January 15, 1992) ("Refarming NOI"); Comments of AAR to the Refarming Report & Order and FNPRM in PR Docket No. 92-235, filed November 20, 1995, at 13-28; Reply Comments of AAR to the Further Notice of Proposed Rulemaking in PR Docket No. 92-235, filed January 16, 1996, at 3.

CERTIFICATE OF SERVICE

I, Chotima Harris, hereby certify that on this 12th day of February, 1997, copies of the foregoing "Reply Comments of the Affiliated American Railroads on ITA 'Blueprint'" were mailed, first class postage prepaid on this 12th day of February to the following:

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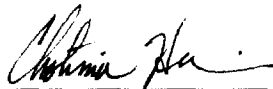
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